

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:	:	
	:	
THE KRYSTAL COMPANY, <i>et al.</i> ,	:	CASE NO. 20-61065-PWB
	:	
Debtors.	:	(Jointly Administered)
	:	
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	:	
1045 ELLIS AVENUE	:	CHAPTER 11
OWNER LLC,	:	
	:	
Movant,	:	CONTESTED MATTER
	:	
vs.	:	
	:	
THE KRYSTAL COMPANY, <i>et al.</i> ,	:	
	:	
Respondent.	:	
	:	

OBJECTION TO CURE AMOUNT OF 1045 ELLIS AVENUE OWNER, LLC

COMES NOW 1045 Ellis Avenue Owner, LLC (“Landlord”) in the within
action and objects to the cure amount assigned to the lease contract for non-
residential real property located at 1045 Ellis Avenue, Jackson, Mississippi 39209,
and in support thereof shows the following:

Jurisdiction

1. On January 19, 2020, Debtors filed their bankruptcy petitions under Chapter 11 of Title 11.

2. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§157(b)(1) and 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper pursuant to 28 U.S.C. §§1408 and 1409.

Factual History

3. The Krystal Company (“Debtor” or “Tenant”) entered into a Lease Agreement (Attached hereto as Exhibit “A”) in 2015 with 1045 Ellis Avenue Owner, LLC for property located at 1045 Ellis Avenue, Jackson, Mississippi 39209 (“Lease”).
4. The Krystal Company was current with its rent when it filed for bankruptcy protection on January 19, 2020.
5. In March 2020, Debtor failed to make its post-petition lease payment to Landlord.
6. In April 2020, Debtor failed to make its post-petition lease payment to Landlord.
7. The Lease provides that Landlord may collect late fees of 5% of the missed payment as well as attorneys’ fees incurred in the enforcement of Landlord’s rights.¹
8. On or about February 12, 2020, Debtors filed a motion to sell assets pursuant to Section 363 of the Bankruptcy Code (Doc. No. 148).

¹ These provisions are found in §7 and §11(f) of the Lease.

9. On March 4, 2020, the Court issued an order (Doc. No. 227) approving the bidding procedures for the sale of Debtor's assets pursuant to Section 363 of the Bankruptcy Code.
10. On April 7, 2020, The Krystal Company, et al. ("Debtor" or "Tenant"), filed its *Notice To Contract Parties To Potentially Assumed Executory Contracts and Unexpired Leases* (Doc. No. 310)("Notice").
11. The Notice includes cure costs for each contract based upon Debtor's records.
12. The Notice includes Exhibit "A" which lists all potential executory contracts and unexpired leases subject to sale together with their proposed cure amounts.
13. On page 6 of the Notice, Landlord is listed as having a cure amount of \$15,234.01 under the Lease.
14. Tenant has underestimated the amount due to Landlord, neglecting to add fees and expenses permitted under the Lease for Debtor's missed payments.
15. Tenant has missed both the March and April payments and is expected to miss the May rent payment as well.
16. The base rent for each month is \$3772.19 plus late fees of \$188.60 per month. In addition, annual taxes are included in Tenant's rent.

17. The Lease also provides that in the event Landlord engages legal counsel to enforce the terms and provisions of the Lease, then Tenant is liable for Landlord's legal expenses.

18. The total cure amount through the end of April 2020 is \$24,768.20.

March Rent	\$3,772.19
Late Fee	\$188.60
April Rent	\$3,772.19
Late Fee	\$188.60
2019 Taxes	\$7,346.62
Attorneys' Fees	\$9,500.00

19. **WHEREFORE**, Landlord respectfully requests the following:

- a. That this Court increase Defendant Tenant's cure amount for 1045 Ellis Avenue Owner, LLC to \$24,768.20 through the end of April;
- b. That this Court order Defendant Tenant to change the cure amount for 1045 Ellis Avenue Owner, LLC to \$24,768.20 through the end of April, in the documents provided to potential purchasers of Debtor Tenant's assets;
- c. If Tenant misses the May rent payment, that the cure amount be increased by the lease amount of \$3,772.19, plus late fees of \$188.60; and
- d. Whatever other relief this Court deems just and proper.

[END OF DOCUMENT]

This 27th day of April, 2020.

/s/ **Gai Lynn McCarthy**

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CERTIFICATE OF SERVICE

This is to certify that I have on this day electronically filed the foregoing *Objection To Cure Amount Of 1045 Ellis Avenue Owner, LLC* using the Bankruptcy Court's Electronic Case Filing program, which sends a notice of this document and an accompanying link to this document to all of the parties who have appeared in this case under the Bankruptcy Court's Electronic Case Filing program:

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This 27th day of April, 2020

/s/ Gai Lynn McCarthy
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